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FISCAL IMPACT REPORT

SPONSOR Fox-Young DATE TYPED 1/31/05 HB 29
 SHORT TITLE Provisional Ballot Counting Requirements SB _____
 ANALYST Medina

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI				

(Parenthesis () Indicate Expenditure Decreases)

Relates to elections and HB 25

SOURCES OF INFORMATION

LFC Files

Responses Received From
Secretary of State

SUMMARY

Synopsis of Bill

House Bill 29 repeals Section 1-12-25.4 (F) NMSA 1978, which provides for the county canvassing board to ensure that only those votes for the positions or measures for which a voter who votes on a provisional ballot at a polling place other than the voter's designated polling place is eligible. It requires that a voter's eligibility for receiving a provisional paper ballot be determined at the precinct level rather than at the county level as current law dictates.

The bill includes a provision for the county clerk to not count a voter's provisional paper ballot if the clerk finds that the voter who voted by provisional paper ballot also voted by absentee ballot. The bill also includes the provision that the county canvassing board will prepare and display a tally of the number of provisional paper ballots received, those found valid and counted, and of those rejected and not counted (with an explanation) and forward this tally to the Secretary of State upon certification of the election. Finally, the bill requires the Secretary of State to issue rules to ensure the security and secrecy of the provisional paper ballots.

Significant Issues

According to the Secretary of State:

“New Mexico is required by law to conform to the provisions of the federal Help America Vote Act (HAVA) of 2002. Section 302 of HAVA is clear:

‘If an individual declares that such individual is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office, but the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote, such individual shall be permitted to cast a provisional paper ballot as follows:

- (1) An election official at the polling place shall notify the individual that the individual cast a provisional ballot in the election.
- (2) The individual shall be permitted to cast a provisional ballot at that polling place upon the execution of written affirmation by the individual before an election official at the polling place stating that the individual is-
 - (A) a registered voter in the jurisdiction in which the individual desires to vote; and
 - (B) eligible to vote in that election.
- (3) An election official at the polling place shall transmit the ballot cast by the individual or the voter information contained in the written affirmation executed by the individual under paragraph (2) to an appropriate State or local election official for prompt verification under paragraph (4).
- (4) If the appropriate State or local election official to whom the ballot or voter information is transmitted under paragraph (3) determines that the individual is eligible under State law to vote, the individual’s provisional ballot shall be counted as a vote in that election in accordance with State law.’

Numerous voters on Election Day, for a myriad of reasons, show up at the wrong precinct within their county. Therefore, allowing such persons wishing to vote to complete a provisional paper ballot provides them with an alternative to vote without having to locate and transport themselves to their designated polling place.

The intent of provisional ballots is to provide voters with an alternative as most of them will not vote if they have to find their proper location due to time constraints with their work schedule, work location relative to their precinct location or the inconvenience in finding their designated polling location.

Mandating that voters must be in their designated precinct for a provisional paper ballot to be counted will only serve to suppress the vote.”

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

The current law concerning the use of provisional ballots, especially the HAVA of 2002 will prevail.

POSSIBLE QUESTIONS

Does this bill comply with the provisions of the Help America Vote Act of 2002?

DXM/yr